

In the
Supreme Court of Missouri

STATE OF MISSOURI,

Respondent,

v.

ADRIANO CLARK,

Appellant.

Appeal to the Supreme Court of Missouri
From the Circuit Court of Webster County, Missouri
Thirtieth Judicial Circuit
The Honorable Donald Cheever, Judge

RESPONDENT'S SUBSTITUTE BRIEF

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STATEMENT OF FACTS

This is an appeal from a Webster County Circuit Court judgment convicting Adriano Clark (Appellant) of the Class C felony possession of a controlled substance. (Tr. 75). Appellant contests the sufficiency of the evidence to support his conviction. Viewed in the light most favorable to the verdict, the evidence presented at trial showed the following:

On February 6, 2013, Officer Jeffrey Ford of the Marshfield Police Department drove to a house at 222 North Fulton Street in response to an abandoned 9-1-1 call that had originally been processed as an assault in progress with somebody in distress. (Tr. 6-7, 32). When he reached the address, he made contact with Autumn Dieckmeyer, who appeared to have been assaulted. (Tr. 7). When Officer Ford asked her if anyone else was at the residence, Ms. Dieckmeyer motioned with her head toward the rear of the house. (Tr. 7).

After Officer Richard Neal arrived at the scene, both officers investigated the east bedroom, where they found Appellant sitting on the west side of the bed, next to a nightstand. (Tr. 8, 18-19, 23). On the nightstand, the officers noticed a black velvet pouch with drawstrings and another brown pouch hanging above the nightstand. (Tr. 9, 29; Ex. 5, 6). As

the officers entered the room, Appellant stood up and began to approach them at the foot of the bed. (Tr. 24).

Shortly after entering the bedroom, Officer Ford arrested Appellant and took him to jail.¹ (Tr. 9). Appellant had \$560 in cash on his person when he was taken into custody. (Tr. 36-37). After he was arrested, Appellant asked Officer Ford about retrieving some of his belongings from the west bedroom. (Tr. 10). Appellant stated that all of the items in the west bedroom belonged to him. (Tr. 10). Inside the west bedroom, the police found “numerous clothes, a toolbox, things of that nature.” (Tr. 10).

When Detective Joseph Taylor of the Marshfield Police Department arrived at the scene, he made contact with Ms. Dieckmeyer on the front porch of the residence. (Tr. 32-33). Detective Taylor observed that Ms. Dieckmeyer was holding her cell phone in her hand. (Tr. 47-48). Ms. Dieckmeyer identified herself as Appellant’s girlfriend and gave Detective Taylor her consent to conduct a search of her home. (Tr. 33-34; Ex. 3).

The east bedroom was the residence’s master bedroom and main living area. (Tr. 35). Along the south wall of the bedroom were photographs depicting Appellant and Ms. Dieckmeyer together. (Tr. 35-36). Next to the

¹ It is unclear from the record why Appellant was arrested.

nightstand on the west side of the bed where Appellant had been sitting, the police found large sized shoes that appeared to belong to a man. (Tr. 37). In the nightstand area, Detective Taylor also found a cell phone that he believed belonged to Appellant because he had observed Ms. Dieckmeyer holding her phone earlier. (Tr. 37, 47-48).

Inside the brown pouch, the police found drug paraphernalia, an electronic scale, a plastic baggie containing eight grams of methamphetamine, and numerous small empty plastic baggies. (Tr. 36). Inside the black pouch that was on top of the nightstand next to the bed, Officer Neal found a substance that was later determined to be methamphetamine. (Tr. 17, 19-20). Based upon Detective Taylor's experience, the items found in the east bedroom were being used to sell and distribute methamphetamine. (Tr. 34-35).

After a bench trial, the court found Appellant guilty of possession of a controlled substance and sentenced him to ten years in the Department of Corrections. (Tr. 75). On March 30, 2015, Appellant's conviction and sentence were affirmed by the Missouri Court of Appeals, Southern District. The Supreme Court of Missouri granted Appellant's Application for Transfer on June 30, 2015.

ARGUMENT

The trial court did not err in overruling Appellant's motion for judgment of acquittal after the close of all evidence and entering judgment and sentence for possession of a controlled substance because the State presented sufficient evidence to prove beyond a reasonable doubt that Appellant constructively possessed the drugs found in the east bedroom.

Appellant argues that the trial court erred in overruling his motion for judgment of acquittal after the close of all evidence and entering judgment and sentence for possession of a controlled substance because there was insufficient evidence to prove beyond a reasonable doubt that Appellant knew about or exercised control over the drugs in the east bedroom. Appellant's argument is without merit.

A. Standard of review.

"The standard of review for a challenge to the sufficiency of the evidence is the same in both court-tried and jury-tried cases." *State v. Almaguer*, 347 S.W.3d 636, 639 (Mo. App. E.D. 2011), citing *State v. McGinnis*, 317 S.W.3d 685, 686 (Mo. App. W.D. 2010). Upon review of the sufficiency of the evidence supporting a criminal conviction, the court of appeals accepts as true all evidence and inferences drawn therefrom that are

favorable to the verdict and disregards all contrary evidence and inferences in order to determine whether a reasonable fact-finder could have found the defendant guilty beyond a reasonable doubt. *State v. Gonzalez*, 235 S.W.3d 20, 24 (Mo. App. S.D. 2007). An “inference” is a deduction or conclusion reasonably drawn from facts established by proof. *Id.* All inferences favorable to the verdict must be logical and reasonably drawn from the evidence, and the appellate court should not supply missing evidence or consider speculative, unreasonable, or forced inferences. *Id.*

“This Court need not believe that the evidence at trial established guilt beyond a reasonable doubt, but instead must determine whether ... any rational trier of fact could have found each essential element of the crime beyond a reasonable doubt.” *State v. Richardson*, 296 S.W.3d 21, 23–24 (Mo. App. S.D. 2009). “The State may prove its case by presenting either direct or circumstantial evidence connecting the defendant to each element of the crime.” *State v. Jones*, 296 S.W.3d 506, 509 (Mo. App. E.D. 2009). “Circumstantial evidence is given the same weight as direct evidence and the jury is free to make reasonable inferences from the evidence presented.” *Id.* “A verdict is not flawed because it was based on circumstantial evidence or because that circumstantial evidence failed to exclude every reasonable theory of innocence.” *State v. Middlemist*, 319 S.W.3d 531, 537 (Mo. App. S.D.

2010). Weighing the evidence to determine whether the defendant was guilty beyond a reasonable doubt is the function of the finder of fact at trial and not the reviewing court. *State v. Weide*, 812 S.W.2d 866, 869 (Mo. App. W.D. 1991).

B. Analysis.

Under Section 195.010(34), “possessed” or “possessing a controlled substance” is defined as follows:

[A] person, with the knowledge of the presence and nature of a substance, has actual or constructive possession of the substance. A person has actual possession if he has the substance on his person or within easy reach and convenient control. A person who, although not in actual possession, has the power and the intention at a given time to exercise dominion or control over the substance either directly or through another person or persons is in constructive possession of it. Possession may also be sole or joint. If one person alone has possession of a substance, possession is sole. If two or more persons share possession of a substance, possession is joint.

§ 195.010(34), RSMo Cum.Supp. 2005

Both knowledge and possession may be proven by reasonable inferences drawn from circumstantial evidence, which need not be conclusive of guilt nor show the impossibility of innocence. *State v. Richardson*, 296 S.W.3d 21, 24 (Mo. App. S.D. 2009); *State v. Hernandez*, 880 S.W.2d 338, 339 (Mo. App. W.D. 1994). Absent proof of actual possession, the State must establish constructive possession. *State v. Hendrix*, 81 S.W.3d 79, 83 (Mo. App. W.D. 2002). “[C]onstructive possession may be shown when other facts buttress an inference of defendant's knowledge of the presence of the controlled substance.” *State v. Purlee*, 839 S.W.2d 584, 587 (Mo. 1992). At a minimum, proof of constructive possession requires evidence that the defendant had access to and control over the premises where the substance was found. *Id.*

While exclusive control of the premises where the controlled substance was found is enough to raise an inference of possession, in a case of joint possession, additional evidence connecting the defendant with the drugs is required. *Id.* at 588. “The State must present some incriminating circumstance that implies that the accused knew of the presence of the drugs and that the same were under his control.” *Id.* at 587. There is no precise formula for determining whether the defendant had constructive possession of the controlled substance; the reviewing court must look to the facts of each

case in determining if the totality of the circumstances supported the finding of possession. *State v. Kerns*, 389 S.W.3d 244, 248 (Mo. App. S.D. 2012); citing *State v. Moses*, 265 S.W.3d 863, 866 (Mo. App. E.D. 2008); see also *State v. Beggs*, 186 S.W.3d 306, 318 (Mo. App. W.D. 2005); *State v. Bacon*, 156 S.W.3d 372, 378-379 (Mo. App. W.D. 2005).

A defendant's knowledge and control of a controlled substance may be inferred from evidence that the defendant likely had routine or superior access to areas where the controlled substance was kept. *State v. Woods*, 284 S.W.3d 630, 640 (Mo. App. W.D. 2009); *Richardson*, 296 S.W.3d at 24; *State v. Bremenkamp*, 190 S.W.3d 487, 493-94 (Mo. App. S.D. 2006). The finder of fact may also consider evidence that the defendant was found in close proximity to the controlled substance. *State v. Koch*, 454 S.W.3d 370, 374 (Mo. App. S.D. 2015); citing *State v. Mickle*, 164 S.W.3d 33, 43 (Mo. App. W.D. 2005); see also *State v. Watson*, 290 S.W.3d 103, 106 (Mo. App. S.D. 2009). Evidence that the defendant's personal items were found in close proximity to the area where the drugs were found is also an incriminating circumstance that connects the defendant with the controlled substance. *State v. McCall*, 412 S.W.3d 370, 374 (Mo. App. E.D. 2013); *State v. Taylor*, 407 S.W.3d 153, 160-61 (Mo. App. E.D. 2013); *State v. Carl*, 389 S.W.3d 276, 285 (Mo. App. W.D. 2013); *Woods*, 284 S.W.3d at 640. Evidence of the defendant's contemporaneous possession

of other drugs, weapons, money, or drug paraphernalia is relevant and admissible to show that the defendant knowingly and intentionally possessed the controlled substance. *State v. Dowell*, 25 S.W.3d 594, 603 (Mo. App. W.D. 2000); *State v. Jackson*, 304 S.W.3d 791, 794 (Mo. App. W.D. 2010).

In the instant case, the State presented sufficient evidence from which a reasonable finder of fact could have found beyond a reasonable doubt that Appellant constructively possessed the methamphetamine that was discovered in the east bedroom. A reasonable finder of fact could have inferred from the totality of the circumstances that Appellant had routine access to and control over the premises where the drugs were found. Here, the police were originally called to the residence in response to a call of an assault in progress with somebody in distress, and upon reaching the residence, found Ms. Dieckmeyer, who appeared to have been assaulted. (Tr. 7, 32). Ms. Dieckmeyer informed the police that Appellant was her boyfriend and directed the officers to the main bedroom of the house – the east bedroom. (Tr. 35-36). The police found Appellant sitting on the bed in the east bedroom and there were no other people inside the house except Appellant. (Tr. 7-8, 18-19, 23). Inside the bedroom the officers noticed photos of Ms. Dieckmeyer and Appellant on the south wall, above the bed. (Tr. 35-36). Appellant admitted to the police that he owned numerous clothes and a

toolbox that were located in another bedroom – the west bedroom. (Tr. 10). This evidence, and the reasonable inferences derived therefrom, suggests that Appellant and Ms. Dieckmeyer were engaged in a relationship and that Appellant was staying at her house, where he had routine access to and control over the premises where the drugs were found.

In light of evidence that the area was under joint control with Ms. Deickmeyer, the State also presented sufficient additional evidence that connected Appellant to the drugs. Appellant was actually found by the police sitting next to the drugs, within easy reach and control, which indicated that he had superior access to the drugs on the west side of the bed. (Tr. 8, 18-19). A reasonable fact-finder could have also inferred Appellant's knowledge and control over the drugs from Appellant's personal belongings (the large size men's shoes and cell phone) that were found in close proximity to the nightstand where the drugs were found. (Tr. 37, 47-48). Appellant's contemporaneous possession of the \$560 in cash on his person, together with the other evidence suggesting methamphetamine was being sold and distributed (electronic scale, plastic baggies), also indicated that Appellant knowingly and intentionally possessed the methamphetamine found in the

east bedroom.² (Tr. 36-37). In light of this evidence, the finder of fact could have found beyond a reasonable doubt that Appellant constructively possessed the methamphetamine that was discovered in the east bedroom.

Appellant argues that neither the cell phone nor the men's shoes that were found in close proximity to the nightstand connected Appellant to the methamphetamine because the State failed to conclusively establish that they actually belonged to Appellant. (App. Br. 21). However, Appellant ignores that both knowledge and possession may be proven by reasonable inferences drawn from circumstantial evidence, which need not be conclusive of guilt nor show the impossibility of innocence. *Richardson*, 296 S.W.3d at

² Appellant argued, both to this Court and the Southern District that the five \$100 and three \$20 bills found on Appellant's person were not indicative of drug dealing because it was not in small denominations – citing *State v. Jackson*, 419 S.W.3d 850, 856 (Mo. App. S.D. 2013). (App. Br. 24). In response, the Southern District noted “We disagree. Some of the bills were a small denomination, as was mentioned in *Jackson*. Moreover, the denomination of the bills is simply one fact, among many others, which may be considered by a factfinder to infer that a large sum of cash found on a defendant's person is indicative of drug dealing.” (Slip Opinion *5).

24; *Hernandez*, 880 S.W.2d at 339. In light of evidence that Appellant lived with Ms. Deickmeyer, the finder of fact could have reasonably inferred that the large size men's shoes and phone belonged to Appellant based on Appellant's proximity to the items when he was found by the police and evidence that Ms. Deickmeyer had been observed by the police holding a different phone. Appellant argues that the State failed to demonstrate that Appellant had not taken off his shoes before sitting on the bed or that Ms. Deickmeyer did not own a second phone. (App. Br. 23). However, this argument is squarely in contradiction to the appellate standard of review for sufficiency of the evidence by asking this Court to consider contrary inferences and substitute its judgment for that of the finder of fact by reweighing the evidence. *Gonzalez*, 235 S.W.3d at 24; *Middlemist*, 319 S.W.3d at 537 (a verdict is not flawed because it was based on circumstantial evidence or because that circumstantial evidence failed to exclude every reasonable theory of innocence).

Appellant relies on *State v. Botts* to argue that the State should have presented evidence demonstrating that the shoes fit Appellant. (App. Br. 22-23). In *State v. Botts*, when the police executed a search of the defendant's trailer, they found a large amount of marijuana in the master bedroom. *State v. Botts*, 151 S.W. 3d 372, 374 (Mo. App. W.D. 2004). During the search, the

police found another man, Mr. Noland, in the master bedroom, but never observed the defendant in close proximity to the bedroom. *Id.* At trial, evidence was entered that Mr. Noland lived in the master bedroom and paid rent to the defendant. *Id.* at 377. On appeal, the State argued that the defendant's conviction could be sustained based upon the men's clothing that was found in the master bedroom, the defendant owned the trailer, and he was in the living room of the trailer when the controlled substance was found. *Id.* In reversing the defendant's conviction because there was insufficient evidence connecting him to the drugs, the Court of Appeals noted that the State had failed to demonstrate that the clothing found in the master bedroom was the same size worn by the defendant. *Id.* at 377.

Here, the facts of the present case are easily distinguishable and more compelling than those in *State v. Botts*. In *State v. Botts*, the clothing alone was insufficient to connect the defendant to the master bedroom because the police never observed the defendant inside the room and there was evidence that another male used the room. That same issue was not present in the instant case because Appellant was discovered inside the room and it was clear that Appellant shared the room with his girlfriend; thus, it was reasonable to infer that the large size male shoes belonged to Appellant. It should also be noted that this inference is consistent with prior cases that

have not required additional evidence that male oriented items belonged to the defendant in order for the items to connect the defendant to nearby drugs. See *McCall*, 412 S.W.3d at 374 (men's items in master bathroom); *Carl*, 389 S.W.3d at 285 (men's clothing in bedroom); *Taylor*, 407 S.W.3d at 160-61 (men's clothing in bedroom); *Bacon*, 156 S.W.3d at 378-79 (men's clothing and hygiene items in master bathroom and master bedroom).

Appellant argues that the evidence in the present case was insufficient by isolating specific facts that connected him to the drugs and analyzing them in a vacuum. Appellant then relies on several cases where the State presented a similar fact, but the court found that the evidence was insufficient under the totality of the circumstances, specifically *State v. Withrow*, 8 S.W.3d 75 (Mo. 1999), *State v. Morris*, 41 S.W.3d 494 (Mo. App. E.D. 2000), *State v. Tomes*, 329 S.W.3d 400, 401 (Mo. App. E.D. 2010), and *State v. Ramsey*, 358 S.W.3d 589 (Mo. App. S.D. 2012). (App. Br. 14-18, 20, 23-24). However, Appellant's analysis is flawed because isolating specific facts in such a way ignores the standard of review and fails to examine the evidence under the totality of the circumstances. There is no precise formula for determining whether the defendant had constructive possession of the controlled substance; the reviewing court must look to the facts of each case in determining if the totality of the circumstances supported the finding of

possession. *Kerns*, 389 S.W.3d at 248; citing *Moses*, 265 S.W.3d at 866; see also *Beggs*, 186 S.W.3d at 318; *Bacon*, 156 S.W.3d at 378-379.

Appellant defends his analysis by arguing that numerous pieces of non-probative evidence cannot be combined to form probative evidence. (App. Br. 25). However this demonstrates a fundamental misunderstanding of the cases that he relies on, which did not reverse the defendant's conviction because an isolated specific fact was inherently non-probative, but because the evidence was not sufficiently probative under the totality of the circumstances.

For example, in *State v. Withrow*, during the search of a house, the police encountered the defendant leaving a room where they found a large amount of equipment and chemicals used to manufacture methamphetamine. *State v. Withrow*, 8 S.W.3d 75, 77 (Mo. 1999). In a different bedroom, the police also found several items of drug paraphernalia and a letter addressed to the defendant at a residence he had not lived at for several years. *Id.* On appeal, this Court reversed the defendant's conviction, holding that nothing connected Appellant to the room other than his presence, which at best, indicated that he was frequently present in a house in which there was an ongoing attempt to manufacture methamphetamine. *Id.* at 81.

Appellant argues that the evidence that he was found alone in the bedroom in close proximity to the methamphetamine was insufficient to connect him to the drugs because, in *State v. Withrow*, this Court found that the defendant's proximity to the contraband in plain view alone was insufficient to support his conviction. (App. Br. 20-21). However, Appellant fails to acknowledge that the evidence connecting Appellant to the methamphetamine in the present case, was far more abundant and more compelling than the evidence in *State v. Withrow*. At trial, the evidence demonstrated that Appellant and Ms. Dieckmeyer were engaged in a relationship and they both lived in the house, where he had routine access to and control over the premises where the drugs were found. A reasonable fact-finder could have inferred Appellant's knowledge and control over the drugs from Appellant's personal belongings that were found in close proximity to the drugs, and Appellant's proximity to the drugs, which indicated that he had superior access to the drugs on the west side of the bed. A reasonable fact-finder could have also inferred Appellant's knowledge and control over the drugs from his contemporaneous possession of \$560 in cash together with the other evidence suggesting methamphetamine was being sold and distributed. It should be noted that the Court in *State v. Withrow* did not find that a defendant's proximity to the drugs is never probative of possession, but

that proximity alone under the facts of that case was insufficiently probative to find possession. In the present case, the State did not solely rely on Appellant's presence in the bedroom to connect Appellant to the methamphetamine; therefore *State v. Withrow* is inapposite.

The trial court did not err in overruling Appellant's motion for judgment of acquittal after the close of all evidence and entering judgment and sentence for possession of a controlled substance because the State presented sufficient evidence to prove beyond a reasonable doubt that Appellant constructively possessed the drugs found in the east bedroom.

CONCLUSION

The trial court did not err in overruling Appellant's motion for judgment of acquittal after the close of all evidence and entering judgment and sentence for possession of a controlled substance. Appellant's convictions and sentences should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify:

1. That the attached brief complies with the limitations contained in Supreme Court Rule 84.06(b) and contains 3705 words, excluding the cover and certification, as determined by Microsoft Word 2007 software; and

2. That a copy of this notification was sent through the eFiling system on this 20th day of August, 2015, to:

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